



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

DATE: September 9, 2015

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary
John Petty, Administrator, Agricultural Resource Management Division

SUBJECT: Producer Led Watershed Protection Grants; Rulemaking Scope Statement (Chapter ATCP 52, Wis. Admin. Code)

PRESENTED BY: Sara Walling, Division of Agricultural Resource Management

REQUESTED ACTION:

At the September 23, 2015 Board meeting, the Department of Agriculture, Trade and Consumer Protection ("DATCP" or "department") will ask the Board to approve a scope statement (copy attached) for the creation of DATCP emergency and permanent rules related to recently enacted law authorizing producer led watershed protection grants. (s. 93.59, Stats.)

Other than setting out basic conditions relating mainly to the composition of the producer group, section 93.59, Stats., leaves the criteria for the issuance of grant funds to be developed through department rulemaking. Section 93.59 (4), Stats., authorizes the department to promulgate rules that define "legal entity" for the purposes of the section, specify the grant application process, and identify activities that may be conducted using grant funds. Accordingly, this rule will address the application process for a grant; the activities that may be conducted using a grant; and the definition of the term "legal entity," used in section 93.59 (1) of the statutes.

A scope statement spells out the general purpose and scope of a proposed rule. Under section 227.135, Stats., DATCP may not begin drafting a proposed rule until the Governor approves a scope statement for the proposed rule and the DATCP Board approves the scope statement. In accordance with section 227.135(2), Stats., the Governor approved this scope statement for emergency and permanent rule changes on September 8, 2015.

DATCP must publish a draft scope statement in the Wisconsin Administrative Register and file a copy with the Department of Administration (DOA) at least 10 days before the Board approves the scope statement. DATCP filed the attached scope statement with DOA and also the Legislative Reference Bureau for publication in the September 14, 2015 issue of the Wisconsin Administrative Register.

If the Board approves the attached scope statement related to the emergency rule, then the Department will begin drafting the emergency rule. Once the rule is approved by the Secretary and Governor, it will be published in the state newspaper and become effective on the date of publication. The proposed emergency rule

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is a temporary rule change; an emergency rule remains in effect for 150 days. DATCP may request that the Joint Committee for Review of Administrative Rules extend the length of time the emergency remains in effect for up to an additional 120 days.

Also if the Board approves the scope statement, DATCP will begin work to draft the permanent rule. The Board will have at least two further opportunities to review the proposed permanent rule. The Board must approve a hearing draft rule before DATCP may hold public hearings on the rule proposal. The Board must also approve the final draft of a permanent rule before DATCP may adopt the rule. The permanent rule will be effective when the final draft has been approved by the DATCP Board and the Governor, completed the legislative review process, and been adopted by the Secretary.

The department may not begin drafting specific rule provisions until the Board approves the scope statement. DATCP seeks to complete the emergency rule process prior to the end of 2015 so that the effective date of the rule will be February 1, 2016. If the emergency rule is promulgated by early 2016 and then granted an extension, then it is anticipated that producer led watershed groups will be able to apply for and receive awards from the \$250,000 of segregated funds authorized to support these locally led conservation efforts each year in the current biennium. In addition, the department seeks to complete the permanent rule in a timely manner so that it will take effect in time for the next biennium.

STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection

Rule No.: Section ATCP 52 Wis. Adm. Code (New)

Relating to: Producer Led Watershed Protection Grants

Rule Type: Both Permanent and Emergency

1. Description of the objective of the rule:

2015 Wisconsin Act 55 ("Budget Act") authorizes the Department of Agriculture, Trade and Consumer Protection ("department") under s. 93.59, Stats., to make grants for nonpoint source pollution abatement activities that are "conducted with the assistance of producer led groups." The department proposes an emergency and permanent rule that will establish criteria for issuing the grants.

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

History and background.

Wisconsin currently has many waterways, lakes and water impoundments with significant water quality impairments. These impairments are attributed to a number of sources, including industrial, urban and agricultural. Because attention to water quality concerns has increased over the last decade, so has attention toward finding innovative solutions to address the causes of water quality impacts. To improve water quality in watershed areas, the Wisconsin Legislature recently passed a law that provides matching grant funds to agricultural producers that operate farms within a watershed. Effective July 1, 2015, the Budget Act enacted section 93.59 of the Wisconsin Statutes ("section 93.59"), under which the department may give grants to qualified groups consisting of agricultural producers that wish to voluntarily conduct nonpoint source water pollution abatement activities. Under section 485 of the Budget Act, the amount of funds to be allocated for the program shall not exceed \$250,000 annually.

Proposed policies and justification.

Section 93.59 sets forth several conditions that an agricultural producer group must meet to obtain a grant. Initially, a producer group must have at least five agricultural producers, each of whom operates as an eligible farm under s. 91.86(1), Stats., in one watershed. The producer group must also be formed through a memorandum of understanding with at least one of several listed organizations, all of which have expertise in conservation or water

pollution abatement. Additional requirements include that a group generally must contribute matching funds equal to at least 50 percent of eligible costs and must file an annual report with the department.

However, other than setting out basic conditions relating mainly to the composition of the producer group, section 93.59 leaves the criteria for the issuance of grant funds to be developed through department rulemaking. Section 93.59(4) of the statutes states that “[t]he department may promulgate rules that do all of the following: (a) Define “legal entity” for the purposes of this section. (b) Specify the application process for a grant under this section. (c) Specify activities that may be conducted using a grant under this section.”

Accordingly, this rule will specify the application process for a grant; identify which activities may be conducted using a grant; and define the term “legal entity,” used in section 93.59(1) of the statutes.

Nature of the Emergency Not Required.

Section 9102 of the Budget Act, which is a nonstatutory provision, states, in relevant part:

Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of a the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection. (Underline added.)

Based on this provision, the Budget Act specifically exempts the department from having to provide evidence or make a finding of emergency before issuing an emergency rule.

Policy Alternatives.

Do nothing. If the department fails to adopt rules that contain the basis for grant determinations, then it will not be able to expend the funds and provide grants to producer led groups as the Legislature directed in the Budget Act.

3. Statutory authority for the rule (including the statutory citation and language):

Sections 93.07 (1) and 93.59, Stats., provide:

93.07 Department duties. It shall be the duty of the department:

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

93.59 Producer led watershed protection grants.

* * *

(4) The department may promulgate rules that do all of the following:

- (a) Define "legal entity" for the purposes of this section.
- (b) Specify the application process for a grant under this section.
- (c) Specify activities that may be conducted using a grant under this section.

4. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

The department estimates that it will use approximately 0.25 FTE staff to develop this rule. This includes time required for the investigation and analysis, rule drafting, preparing related documents, holding public hearings and communicating with affected persons and groups. The department will use existing staff to develop this rule.

5. Description of all entities that may be impacted by the rule:

This rule will enable groups of agricultural producers that operate farms in a watershed to obtain financial assistance to voluntarily conduct nonpoint source water pollution abatement activities. By statute, producer led groups must collaborate with one of the following: the department, the Department of Natural Resources, a county land conservation committee, the University of Wisconsin-Extension, the Discovery Farms Program of the University of Wisconsin-Extension, or a nonprofit conservation organization.

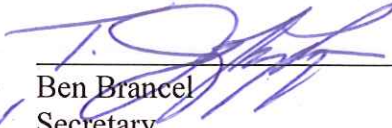
6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:

This rule will only establish criteria to issue grants obtained from state funds within a state-created program; there are no existing or proposed federal regulations related to this activity.

7. Anticipated economic impact:

Because participation in the program is voluntary, there will be no negative economic impact produced by the proposed rule. The proposed rule will enable the department to provide grants to producer led groups that wish to assist agricultural producers in a watershed to voluntarily conduct nonpoint source water abatement activities. Grant funds should positively impact businesses that provide goods and services used in abatement activities.

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for  *Deputy Secretary*
Ben Brancel
Secretary
Department of Agriculture, Trade and Consumer Protection

August 26, 2015
Date Submitted